

Office of the Secretary of Defense

§ 223.6

the requirements of 10 U.S.C. 128, necessary to protect the health and safety of the public or the common defense and security.

(d) This part and title 10 of the Code of Federal Regulations (CFR) part 1017 shall be used as guidance for handling DOE UCNI that is under DoD control.

(e) This part does not prevent a determination that information previously determined to be DoD UCNI is classified information in accordance with Volume 1 of DoD Manual 5200.01³ and other applicable standards of classification.

§ 223.5 Responsibilities.

(a) The Under Secretary of Defense for Intelligence (USD(I)) shall oversee the DoD program for controlling DoD UCNI and coordinate DoD compliance with the DOE program for controlling DOE UCNI.

(b) The Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs (ASD(NCB)), under the authority, direction, and control of the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall:

(1) Identify information regarding nuclear weapons security and the protection of SNM at DoD nuclear reactor facilities as DoD UCNI and protect it from unauthorized dissemination, consistent with the requirements of 10 U.S.C. 128 and this part.

(2) Advise the USD(I) on implementation of the DoD UCNI program.

(3) Designate a DoD UCNI reviewing official, who shall be authorized to determine that materials or documents contain, do not contain, or no longer contain DoD UCNI.

(c) The Director, Administration and Management shall provide guidance, as needed, to the Heads of the DoD Components regarding 5 U.S.C. 552, as implemented by 32 CFR part 286, as it applies to the DoD UCNI program.

(d) The Heads of the DoD Components shall identify DoD UCNI within their Component and protect it from unauthorized dissemination, consistent

with the requirements of 10 U.S.C. 128 and this part.

§ 223.6 Procedures-identifying and controlling DoD UCNI.

(a) *General.* (1) The decision to protect unclassified information as DoD UCNI shall be based on a determination that the unauthorized dissemination of such information could reasonably be expected to have an adverse effect on the health and safety of the public or the common defense and security by increasing significantly the likelihood of the illegal production of nuclear weapons or the theft, diversion, or sabotage of DoD SNM, SNM equipment, SNM facilities, or nuclear weapons in DoD custody. This is called the “adverse effects test.”

(2) DoD UCNI shall be identified, controlled, marked, transmitted, and safeguarded in the DoD Components, the Intelligence Community, and the North Atlantic Treaty Organization (NATO), and among DoD contractors, consultants, and grantees. Within NATO, DoD UCNI shall be marked, controlled, and safeguarded as “NATO RESTRICTED” information.

(3) Contracts requiring access to or the preparation of unclassified information that is or could be DoD UCNI shall require compliance with this part and any applicable DoD Component regulations, and shall specify requirements for identifying, marking, handling, and safeguarding DoD UCNI.

(b) *Identifying DoD UCNI.* (1) To be designated and protected as DoD UCNI, information must:

(i) Be unclassified.

(ii) Pertain to security measures, including plans, procedures, and equipment, for the physical protection of DoD SNM, SNM equipment, SNM facilities, or nuclear weapons in DoD custody.

(iii) Meet the adverse effects test.

(2) Information shall be protected as DoD UCNI if it qualifies for one or more of the categories listed in § 223.7(c) and meets the criteria in paragraph (b)(1) of this section.

(3) DoD personnel, in making a determination to protect unclassified information as DoD UCNI, shall consider the probability of illegal production of nuclear weapons or of theft, diversion,

³Available on the Internet at http://www.dtic.mil/whs/directives/corres/pdf/520001_vol1.pdf.

or sabotage of DoD SNM, SNM equipment, SNM facilities, or nuclear weapons in DoD custody if the information proposed for protection were made available for public disclosure and dissemination. The cognizant official shall consider how the unauthorized disclosure or dissemination of such information could assist a potential adversary in:

(i) Selecting a target for an act of theft, diversion, or sabotage of nuclear weapons in DoD custody, DoD SNM, SNM equipment, or SNM facilities (e.g., relative importance of a facility or the location, form, and quantity of DoD SNM). Information that can be obtained by observation from public areas outside controlled locations should not be considered as DoD UCNI.

(ii) Planning or committing an act of theft, diversion, or sabotage of nuclear weapons in DoD custody, DoD SNM, SNM equipment, or SNM facilities (e.g., design of security systems; building plans; methods and procedures for transfer, accountability, and handling of nuclear weapons or DoD SNM; or security plans, procedures, and capabilities).

(iii) Measuring the success of an act of theft, diversion, or sabotage of nuclear weapons in DoD custody, DoD SNM, SNM equipment, or SNM facilities (e.g., actual or hypothetical consequences of the sabotage of specific vital equipment or facilities).

(iv) Illegally producing a nuclear explosive device (e.g., unclassified nuclear weapon design information useful in designing a primitive nuclear device; location of unique DoD SNM needed to fabricate such a device; or location of a nuclear weapon).

(v) Dispersing DoD SNM in the environment (e.g., location, form, and quantity of DoD SNM).

(c) Where questions or disagreements arise on designation or continued protection of information as DoD UCNI, the reviewing official appointed by the ASD(NCB) shall make the final determination. If a determination cannot be made because applicable guidance is unclear or does not exist, the document or material in question shall be referred to the reviewing official for a determination.

(d) *Access to DoD UCNI.* (1) No explicit designation or security clearance is required for access to DoD UCNI; however, a person granted access to DoD UCNI must have a need to know the specific DoD UCNI to which access is granted in the performance of official duties or of DoD-authorized activities.

(2) The individual granting access to DoD UCNI shall notify each person granted such access of applicable regulations, including the physical protection and access requirements, concerning the protection of DoD UCNI as well as any special dissemination limitations that apply to the specific DoD UCNI to which access is being granted, prior to dissemination of the DoD UCNI to the person.

(3) The requirement to notify persons granted access to DoD UCNI of applicable regulations concerning protection and dissemination of DoD UCNI may be met by attachment of an appropriate cover sheet to the front of each document or material containing DoD UCNI prior to its transmittal to the person granted access.

(e) *Marking DoD UCNI.* (1) An unclassified document with DoD UCNI shall be marked “DOD UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION” (or abbreviated “DOD UCNI”) at the bottom on: the outside of the front cover, if any; the outside of the back cover, if any; the first page; and each individual page containing DoD UCNI.

(2) Within an unclassified document, an individual page containing DoD UCNI shall be marked to show which of its portions contain DoD UCNI. In marking sections, parts, paragraphs, or similar portions, the parenthetical term “(DCNI)” shall be used and placed at the beginning of the applicable portions.

(3) In a classified document, an individual page that has both DoD UCNI and classified information shall be marked at the top and bottom of the page with the highest security classification of information appearing on that page or with the overall classification of the document. In marking sections, parts, paragraphs, or similar portions, the parenthetical term “(U//DCNI)” shall be used and placed at the beginning of those portions containing

DoD UCNI. In a classified document, an individual page that has DoD UCNI, but no classified information, shall be marked “UNCLASSIFIED//DOD UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION” (or “UNCLASSIFIED//DOD UCNI”) at the top and bottom of the page, unless the page is marked with the overall classification of the document. The DoD UCNI information may be included in the same portion with other classified or unclassified information, if all relevant statutory and regulatory markings and citations are included. Volume 2 of DoD Manual 5200.01⁴ provides additional guidance on marking classified documents.

(4) Other material (e.g., electronic media, photographs, films, tapes, or slides) containing DoD UCNI shall be conspicuously marked “DOD UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION” (or “DOD UCNI”), in accordance with paragraphs (d)(1) through (d)(3) of this section, to ensure that a recipient or viewer is aware of the status of the information.

(e) *Dissemination and Transmission.* (1) DoD UCNI may be disseminated among the DoD Components, members of the Intelligence Community, NATO, and DoD contractors, consultants, and grantees on a need-to-know basis for the conduct of official business for the Department of Defense. Dissemination to NATO or other foreign or international entities requires prior review and approval by the appropriate dissemination entity.

(2) Recipients shall be made aware of the status as DoD UCNI for all such information disseminated to them. Transmission of DoD UCNI shall be by means which preclude unauthorized disclosure or dissemination (e.g., secure phone, encrypted email).

(3) Documents containing DoD UCNI shall be marked as prescribed in paragraph (d) of this section. Transmittal documents shall call attention to the presence of DoD UCNI attachments using an appropriate statement in the text or including at the bottom of the transmittal document a statement

similar to: “The attached document contains DoD Unclassified Controlled Nuclear Information (DoD UCNI).”

(4) DoD UCNI transmitted outside the Department of Defense requires application of an expanded marking to explain the significance of the DoD UCNI marking. That may be accomplished by adding the transmittal statement “DEPARTMENT OF DEFENSE/UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION/EXEMPT FROM MANDATORY DISCLOSURE PURSUANT TO 5 U.S.C. 552(b)(3), AS AUTHORIZED BY 10 U.S.C. 128” to the document cover before transfer.

(5) When not commingled with classified information, DoD UCNI may be sent by first-class mail in a single, opaque envelope, or wrapping.

(6) DoD UCNI shall not be discussed or transmitted over an unprotected telephone or telecommunications circuit (to include facsimile transmissions) except in case of an emergency.

(7) Each part of electronically transmitted messages containing DoD UCNI portions shall be marked appropriately. Unclassified messages, including email, with DoD UCNI portions shall have the abbreviation “DOD UCNI” at the top of the message, before the beginning of the text, and the parenthetical marking “(DCNI)” preceding each portion of text containing DoD UCNI information. Classified messages containing DoD UCNI portions shall be marked with the highest classification of information within the message; use the parenthetical marking “(U//DCNI)” preceding each portion of text containing DoD UCNI information.

(8) DoD UCNI processed, stored, or produced on stand-alone or networked computers or other information technology systems shall enforce protection from unauthorized disclosure or dissemination, in accordance with the procedures in paragraph (f) of this section.

(9) A document marked as having DoD UCNI may be reproduced minimally without permission of the originator and consistent with the need to carry out official business.

⁴Available on the Internet at http://www.dtic.mil/whs/directives/corres/pdf/520001_vol2.pdf.

(f) *Safeguarding DoD UCNI.* (1) During normal working hours, documents and materials determined to contain DoD UCNI shall be safeguarded and controlled by measures designed to reduce the risk of access to DoD UCNI by unauthorized individuals. Particular attention should be paid to areas where DoD UCNI is used or stored if unescorted access by unauthorized individuals is possible.

(2) At the close of business, DoD UCNI shall be stored to preclude disclosure. Storage of such information with other unclassified information in unlocked receptacles (e.g., desks, bookcases) is adequate if Government or Government-contractor internal building security is provided during non-duty hours. When such internal building security is not provided, locked rooms or buildings normally provide adequate after-hours protection. If such protection is not considered adequate, DoD UCNI shall be stored in locked receptacles (e.g., locked file cabinet, locked desk drawer, safe).

(3) Non-record copies of DoD UCNI shall be destroyed by shredding or burning or, if the sensitivity or volume of the information justifies it, in accordance with the procedures specified by Volume 3 of DoD Manual 5200.01⁵ for classified information. Record copies of DoD UCNI shall be disposed of in accordance with the DoD Component's record management regulations. DoD UCNI on magnetic storage media shall be disposed of by overwriting to preclude its reconstruction. DoD UCNI in electronic form shall be deleted and also removed from any desktop trash or recycling files.

(4) Unauthorized dissemination and disclosure of DoD UCNI justifies investigative and administrative actions to determine cause, assess impact, and fix responsibility. The DoD Component that originated the DoD UCNI shall be informed of its unauthorized disclosure and the outcome of the investigative and administrative actions. Unauthorized disclosure of DoD UCNI does not constitute a compromise of classified information.

⁵Available on the Internet at http://www.dtic.mil/whs/directives/corres/pdf/520001_vol3.pdf.

(g) *Retirement of Document or Material.*

(1) Any unclassified document or material that is not marked as containing DoD UCNI but that may contain DoD UCNI shall be marked upon retirement in accordance with the DoD Component's record management regulations.

(2) A document or material marked as containing DoD UCNI is not required to be reviewed upon, or subsequent, to retirement. Retired documents or materials shall be reviewed in accordance with paragraph (h) of this section upon a request for their release made pursuant to 5 U.S.C. 552.

(h) *Requests for Public Release of UCNI.* (1) Pursuant to 10 U.S.C. 128, information that qualifies as DoD UCNI is exempt from mandatory disclosure pursuant to 5 U.S.C. 552. Requests for the public release of DoD UCNI shall be denied, in accordance with procedures established in 32 CFR part 286, pursuant to 5 U.S.C. 552(b)(3), citing 10 U.S.C. 128 as authority.

(2) Requests for DOE UCNI contained within DoD documents shall also be denied pursuant to 5 U.S.C. 552(b)(3), but 42 U.S.C. 2168 shall be cited, after formal FOIA consultation with the DOE, as the basis for invoking the exemption. Requests for DOE documents will be formally referred to DOE for final adjudication and response to the requestor.

(3) The reviewing official designated by the ASD (NCB) shall review any retired DoD UCNI document or material upon a request for its release made pursuant to 5 U.S.C. 552.

§ 223.7 Procedures-determination of DoD UCNI.

(a) *Use of the Guidelines.* (1) The guidelines in this section are the basis for determining what unclassified information regarding the physical protection of DoD SNM, SNM equipment, SNM facilities, or nuclear weapons in DoD custody, in a given technical or programmatic subject area are to be designated as DoD UCNI.

(2) The decision to protect unclassified information as DoD UCNI shall be based on a determination that the unauthorized dissemination of such information could reasonably be expected to have an adverse effect on the health and safety of the public or the common